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January 21, 2005
Mr. Brad C. Deutsch
Assistant General Counsel
Federal Election Commission
999 E. Street N.W.
Washington, D.C. 20463

Re: Notice of Proposed Rulemaking on Payroll Deductions by Corporations to Trade Associations' Separate Segregated Fund

11 CFR Part 114 (December 22, 2004)

Dear Mr. Deutsch:

I am writing on behalf of the Independent Community Bankers of America (ICBA) to convey support for the proposed rule on payroll deductions by member corporations to a trade association's separate segregated fund (SSF).

ICBA represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to promoting the interests of the community banking industry.(1) ICBPAC is a federal PAC established by ICBA to raise funds to represent the community banking industry in lobbying, education and legislative activities.

The Commission proposes eliminating the current prohibition on a corporation's use of payroll deductions or check-offs for contributions by restricted class employees to the separate segregated fund (SSF) of a trade association of which the corporation is a member. 11 CFR 114.8(e).

After reviewing the proposed rule, and considering its implications for members' activities and operations, ICBA fully supports the rule change. Not only will it bring legal sense to a regulatory area characterized by an outdated and illogical prohibition, it will increase the efficiency and effectiveness of associations' fundraising, and thus empower both the associations and the constituencies they serve.

Nothing in the Federal Election Campaign Act of 1971, as amended (the Act) prohibits trade associations from soliciting contributions to the association's SSF from appropriate personnel working at member corporations, provided the member corporation has approved the solicitation and has not approved a solicitation by another trade association in the same year. Indeed, the Act is permissive. See 2 U.S.C. 441b(b)(4)(D) ; 11 CFR 114.8(c). (2)

FCC regulations explicitly state that [t]here is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use. 11 CFR 114.8(e)(3). However, in 1976 the Commission prohibited member corporations from using payroll deductions to collect contributions from covered personnel to a trade association's SSF. Id. (The member corporation may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association.) (emphasis added). This prohibition represents precisely the sort of limitation on the method of facilitating voluntary contributions that 11 CFR 114.8(e)(3) clearly states does not exist.

ICBA believes this restriction is unnecessary in light of regulatory restrictions on the solicitation and collection of voluntary contributions to SSFs. See 11 CFR 114.8(e)(4) (A trade association and/or its separate segregated fund is subject to the provisions of 114.5(a).). The Commission in 11 CFR 114.5(a) established stringent restrictions on solicitations, including disclosure obligations on the materials sent to employees or members. These restrictions ensure that the process by which contributions to SSFs are solicited and made is not susceptible to abuse and that those

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solicited are not unduly pressured or misled. By contrast, the restriction on payroll deductions serves no similar purpose.

Not only does the text of the statute and the Commission's regulations cast doubt on the necessity and validity of the payroll deduction prohibition, numerous Advisory Opinions of the Commission are in tension with the current regulation. The Commission has repeatedly approved of member corporations' efforts to aid in the solicitation, collection and transmission of voluntary contributions to trade association SSFs. The distinction that currently exists in 11 CFR 114.8(e)(3) elevates form over substance and denies corporations and trade associations the most efficient means of accomplishing a goal that is clearly permissible activity by a member corporation. For example, the Commission has noted that 11 CFR 114.8(e)(3) appears to contemplate that executives of member corporations may collect and forward contribution checks for a trade association's SSF. Advisory Opinion 2003-22. In that Opinion, the Commission permitted the physical collection and forwarding of contribution checks by a member corporation to a trade association SSF. By contrast, the prohibited payroll deduction is more efficient and will impose fewer costs to achieve the very same permissible end: the gathering and sending of contributions to the trade association SSF.

Likewise, the Commission has approved of automatic deductions from credit union members' share accounts to a trade association SSF, distinguishing the deduction on the ground that the acceptable deduction was from the share account and not from an employee payroll account. Advisory Opinion 2000-4; see also Advisory Opinion 1998-19. This distinction was necessary because of the language of 11 CFR 114.8(e)(3) rather than any policy or principle. Similarly, the Commission has previously found an automated collection scheme, whereby voluntary contributions to a trade association from covered members' personal checking accounts at a bank, did not run afoul of 11 CFR 114.8(e)(3). Advisory Opinion 1999-35. This Opinion turned on the irrelevant distinction between an automatic payroll deduction and an automatic deduction from the same person's checking account. None of the Opinions analyze or even mention any policy animating the prohibition on payroll deductions and checkoffs set forth in 11 CFR 114.8(e)(3).

In light of so many Opinions authorizing functionally equivalent methods for collecting contributions, it is obvious that this narrow prohibition serves no principled purpose. The Commission should remedy this legal distinction by eliminating the prohibition on payroll deductions and checkoffs for otherwise permissible contributions to trade association SSFs.

The proposed rule will advance the public interest beyond simply harmonizing this area of the law. The new rule will allow trade associations' SSFs greater access to individual contributions from corporations' restricted classes, which include more and more employees who are also stockholders. Further, given the size of many trade associations and their SSFs, this technology will increase the efficiency of current fundraising activities.

For all these reasons, ICBA strongly supports the elimination of 11 CFR 114.8(e)'s contradictory restriction on contribution methods. The Commission's opinions confirm that the prohibition is one of form and not substance. As such, the Commission should amend 11 CFR 114.8(e) to permit corporations' use of payroll deductions or check-offs for contributions by restricted class employees to a corporate trade association's SSF.

Sincerely,

Ronald K. Ence
Treasurer, ICBPAC

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(1) Nearly 5,000 strong, ICBA members employ more than 225,000 Americans and hold more than \$778 billion in assets.

(2) 441b(b)(4)(D) provides: This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.